

## LEGAL REVIEW NOTE

**LC#:** LC 1961, To Legal Review Copy, as of  
January 29, 2013

**Short Title:** Establish the firearm protection act

**Attorney Reviewers:** Todd Everts/Julianne  
Burkhardt

**Date:** February 2, 2013

### CONFORMITY WITH STATE AND FEDERAL CONSTITUTIONS

*As required pursuant to section 5-11-112(1)(c), MCA, it is the Legislative Services Division's statutory responsibility to conduct "legal review of draft bills". The comments noted below regarding conformity with state and federal constitutions are provided to assist the Legislature in making its own determination as to the constitutionality of the bill. The comments are based on an analysis of relevant state and federal constitutional law as applied to the bill. The comments are not written for the purpose of influencing whether the bill should become law but are written to provide information relevant to the Legislature's consideration of this bill. The comments are not a formal legal opinion and are not a substitute for the judgment of the judiciary, which has the authority to determine the constitutionality of a law in the context of a specific case.*

#### Legal Reviewer Comments:

LC 1961 provides that an official, agent, or employee of the United States who purposely or knowingly enforces a law, regulation, or order of the United States relating to a personal firearm, firearm accessory, or ammunition manufactured in this state is guilty of a felony and upon conviction shall be punished by a term of imprisonment in a county jail for not less than 1 year or more than 5 years, and fined an amount not to exceed \$5,000, or both.

As drafted, LC 1961 may raise potential legal issues regarding whether the proposed legislation complies with federal law. The Supremacy Clause of the U.S. Constitution provides:

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

U.S. Const., Art. VI, cl. 2. The Supremacy Clause provides that if a conflict between state and federal law exists, federal law controls and state law is preempted. The U.S. Supreme Court has

held that “[U]nder the Supremacy Clause, from which our pre-emption doctrine is derived, ‘any state law, however clearly within a State’s acknowledged power, which interferes with or is contrary to federal law, must yield.’” *Gade v. National Solid Wastes Mang. Assoc.*, 505 U.S. 88, 108 (1992). In addition, the U.S. Supreme Court has held that states must “enact, enforce, and interpret state law in such fashion as not to obstruct the operation of federal law . . .” *Printz v. U.S.*, 521 U.S. 898, 913 (1997).

LC1961 could prohibit federal employees from investigating suspected violations of federal law and potentially enforcing federal law. As such, LC1961 may raise conformity issues with the Supremacy Clause of the U.S. Constitution. The U.S. Supreme Court has held on several occasions that federal preemption exists when “compliance with both federal and state regulation is a physical impossibility”. *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132 (1963); *See also McDermott v. Wisconsin*, 228 U.S. 115 (1913). The legislation may also prohibit or interfere with a properly issued warrant from a federal judge, which could directly impede federal law enforcement efforts.

**Requester Comments:** None